

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 09-3065 (DWF/RLE)

KleinBank,)
)
Plaintiff,)
)
v.) **United States of**
) **America's Statement**
Raymond W. Haugland, et al.,) **of the Case**
)
Defendants.)

This action is a priority dispute between creditors of the Defendants Raymond W. and Yvonne J. Haugland (the "Hauglands"). The Plaintiff claims an interest in a property owned by the Hauglands. The United States (through the Internal Revenue Service) contends that two federal tax liens it holds on the Hauglands' property are prior and superior to the Plaintiff's mortgage.

Facts Supporting the United States's Claims & Defenses

1. This case concerns residential property ("the Subject Property") in McGregor, Minnesota, owned by the Hauglands.
2. The Subject Property is located in Aitkin County, Minnesota and legally described as follows:

That part of Government Lot 4 of Section 1, Township 49, Range 24, Aitkin County, Minnesota, to be described as follows: Commencing at a point on the South line of the Plat of Sandy Lake Beach where it intersects the southerly extension of the easterly line of Lot 30 of said Plat; thence Easterly along said South line of said plat a distance of 509.04

feet; thence South along the southerly extension of the westerly line of Lot 19 of said plat a distance of 125.00 feet; thence South 00 degrees 54 minutes 01 seconds West a distance of 383.94 feet to a point hereby designated and hereinafter referred to as POINT A; thence North 83 degrees 54 minutes 29 seconds East a distance of 194.01 feet; thence South 83 degrees 56 minutes 41 seconds East a distance of 373.00 feet; thence South a distance of 100.00 feet to the actual point of beginning of the following tract of land to be described; thence South 16 degrees 27 minutes 56 seconds East a distance of 213 feet, more or less, to the shoreline of Big Sandy Lake; thence Northeasterly along said shoreline to its intersection with a line bearing South 79 degrees 56 minutes 57 seconds East from the actual point of beginning; thence North 79 degrees 56 minutes 57 seconds West a distance of 222 feet, more or less, to the actual point of beginning. It being the intent of this description that the southerly extension of the easterly line of said Lot 30 has an assigned bearing of South. Containing 0.6 acre, more or less. Subject to and together with an easement for road purposes as described on the attached Exhibit B (to follow below). Subject to easements, reservations, restrictions or ordinances now of record.

That part of Government Lot 4 of Section 1, Township 49, Range 24, Aitkin County, Minnesota, to be described as follows: Commencing at a point on the South line of the Plat of Sandy Lake Beach where it intersects the southerly extension of the easterly line of Lot 30 of said Plat; thence Easterly along said South line of said plat a distance of 509.04 feet; thence South along the southerly extension of the westerly line of Lot 19 of said plat a distance of 125.00 feet; thence South 00 degrees 54 minutes 01 seconds West a distance of 383.94 feet to a point hereby designated and hereinafter referred to as POINT A; thence North 83 degrees 54 minutes 29 seconds East a distance of 194.01 feet; thence South 83 degrees 56 minutes 41 seconds East a distance of 373.00 feet; to the actual point of beginning of the following tract of land to be described; thence South a distance of 100.00 feet; thence South 79

degrees 56 minutes 57 seconds East a distance of 222 feet, more or less, to the shoreline of Big Sandy Lake; thence Northerly along said shoreline a distance of 102 feet, more or less, to its intersection with a line bearing South 80 degrees 53 minutes 37 seconds East from the actual point of beginning; thence North 80 degrees 53 minutes 37 seconds West a distance of 242.68 feet, more or less, to the actual point of beginning. It being the intent of this description that the southerly extension of the easterly line of said Lot 30 has an assigned bearing of South. Containing 0.6 acre, more or less. Subject to and together with an easement for road purposes as described on the attached Exhibit B (to follow below). Subject to easements, reservations, restrictions or ordinances now of record.

EXHIBIT B

A 33 foot wide perpetual easement for road purposes over, under and across the following described property: Government Lot 3 and Government Lot 4 of Section 1, Township 49, Range 24, Aitkin County, Minnesota. Said easement being 16½ feet to the right and 16½ feet to the left of the following centerline to be described: Beginning at the before described POINT A; thence North 83 degrees 54 minutes 29 seconds East a distance of 194.01 feet; thence South 83 degrees 56 minutes 41 seconds East a distance of 373.00 feet; thence South a distance of 100.00 feet; thence South 16 degrees 27 minutes 56 seconds East a distance of 30.00 feet; thence North 16 degrees 27 minutes 56 seconds West a distance of 30.00 feet; thence North a distance of 100.00 feet; thence North 83 degrees 56 minutes 41 seconds West a distance of 373.00 feet; thence North 05 degrees 46 minutes 49 seconds East a distance of 221.40 feet; thence North 06 degrees 30 minutes 31 seconds West a distance of 279.36 feet to the south line of the plat of Sandy Lake Beach and there said centerline terminating. It is the intent of this description for the easterly and westerly lines of said easement to be lengthened or shortened to intersect with the south line of said plat.

(herein "Property").

3. Plaintiff brought an action to reform its mortgage on the Subject Property (the "KleinBank Mortgage") in Minnesota state court on September 25, 2009. Docket Nos. 1-1 - 1-2.

4. The United States filed a timely notice of removal of the case to this Court on November 2, 2009. Docket No. 1.

5. The United States recorded Federal Tax Liens with the County Recorder for Aitkin County, Minnesota against the Subject Property on March 4 and March 17, 2009 against Raymond W. Haugland and Yvonne J. Haugland, respectively:

[OMIT]	TAX PERIOD	DATE TAX ASSESSED	DATE RECORDED	DOCUMENT NUMBER	BALANCE AS OF 6/22/09
[OMIT]	9/30/2002 to 12/31/2006	12/8/2008	3/4/2009	392573	\$250,339.36
[OMIT]	9/30/2002 to 12/31/2006	12/8/2008	3/17/2009	392813	\$250,339.36

6. These Federal Tax Liens are continuing to accrue interest and penalties as provided by Title 26, United States Code, Section 6601 and Section 6651(a)(2).

7. Plaintiffs' complaint acknowledges that the original KleinBank Mortgage contained an incorrect legal description of the Subject Property. See Docket No. 1-1, Amended Compl. ¶¶ 5-6.

8. The KleinBank Mortgage omitted the language underlined in the legal description above. See, supra, ¶ 2.

9. Based on the incorrect legal description of the Subject Property in the KleinBank Mortgage, the United States claims the Federal Tax Liens have priority over the KleinBank Mortgage under the "choateness doctrine." E.g., United States v. New Britain, 347 U.S. 81, 84 (1954); In re Stradtmann, BAP No. 07-6056, 391 B.R. 14, 17 n.6 (8th Cir. June 30, 2008); U.S. v. Central Bank of Denver, 843 .3d 1300, 1307 (10th Cir. 1988); Samco Mortgage Corp. v. Keehn, 721 F. Supp. 1209 (D. Wyo. 1989).

Requested Relief

10. The United States requests an order declaring the federal tax liens filed against the Hauglands with the Aitkin County Recorder as document numbers 392573 and 392813 are good, valid, and subsisting liens against the Subject Property with priority over the KleinBank Mortgage.

Dated: January 28, 2010 Respectfully submitted,

B. TODD JONES
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s/ David W. Fuller

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